IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

Crl.Rev.Pet.No. 3664 of 2007()

CRA.526/2006 of II ADDL.SESSIONS COURT, ERNAKULAM
ST.247/2005 of JFCM-IV, KOCHI

.....

REVN. PETITIONER: APPELLANT/ACCUSED

BIJOY, AGED 41 YEARS, S/O. SREEDHARAN,
PROPRIETOR, BIJOY ENGINEERING CONTRACTORS,
C/O. SWABIN TRANSPORTS, 7TH FLOOR,
PENTA TOWERS, KOCHI-17.

BY ADV. SRI.PAVITHRAN RAVINDRA NATH
SRI.R.MURALIDHARAN (AROOR)

RESPONDENTS: RESPONDENTS/STATE AND COMPLAINANT

---

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. GEORGE JACOB, AGE NOT KNOWN,
M/S. COCO PUMP, KRL, AMBALAMUGHAL, NOW
RESIDING AT ASHARIPARAMBIL, PALARIVATTOM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 11/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3664 OF 2007

Dated this the 11th day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No.247/2005 on the file of the J.F.C.M.-IV, Kochi challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision

Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel appearing for the revision petitioner contented that the person who was shown as the accused in the private complaint was one Binjoy, Proprietor of Binjoy Engineering Contractors whereas the petitioner is Bijoy and he is the Proprietor of Bijoy Engineering Contractors. According to the learned counsel, for the conviction of the said Binjoy the revision petitioner is sought to be arrested. The argument is that a wrong person is sought to be proceeded against for the conviction of the accused in the above case.

5. Eventhough the above argument, in the first blush, appears to be interesting, the fact remains that the cheque in question admittedly contains the signature of the revision petitioner Bijoy. If he was not Binjoy the person who was arrayed as the accused and who was convicted by the trial court, he owes an explanation as to why he filed the appeal before the lower appellate court in the name of Bijoy. But the fact that the cheque in question has been issued on behalf of a proprietory concern of which the petitioner is the Proprietor and it also contains his

signature goes a long way to probabulise the case of the complainant. The learned counsel would say that the cheque might have been misused by his employees long back. If that be the case, he would have definitely come to know the above fact when he entered appearance before the trial court. But he had no such case and he has also not initiated any action against any of his employees for allegedly misusing the cheque belonging to the petitioner. Under these circumstances, the said defence is nothing but a cock and bull story devised with a view to avoid the liability under the cheque. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

6. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the

condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 2nd respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.50,000/- (Rupees fifty thousand only) [giving credit to the sum of Rs.25,000/- (Rupees twenty five thousand only) deposited by the revision petitioner before the trial court pursuant to the orders of the lower appellate court and which amount shall be allowed to be withdrawn by the 2nd respondent complainant] within five months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

aks